

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 SAMUEL K. HAMMOND
Deputy Attorney General
4 State Bar No. 141135
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2083
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 1H-2011-346

12 **DAVID ALAN WILDMAN, R.C.P.**
13 **1385 Palm Avenue**
14 **Beaumont, CA 92223**

A C C U S A T I O N

15 **Respiratory Care Practitioner**
16 **License No. 11032**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Stephanie Nunez (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Respiratory Care Board of California, Department of
22 Consumer Affairs.

23 2. On or about January 28, 1986, the Respiratory Care Board issued Respiratory
24 Care Practitioner License Number 11032 to David Alan Wildman, R.C.P. (Respondent). The
25 Respiratory Care Practitioner License was in full force and effect at all times relevant to the
26 charges brought herein and will expire on May 31, 2013, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"...

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

"...

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

"..."

7. Section 3750.5 of the Code states:

"In addition to any other grounds specified in this chapter, the board may deny, suspend, place on probation, or revoke the license of any applicant or licenseholder who has done any of the following:

1 "(a) Obtained, possessed, used, or administered to himself or herself in
2 violation of law, or furnished or administered to another, any controlled substances as
3 defined in Division 10 (commencing with Section 11000) of the Health and Safety
4 Code, or any dangerous drug as defined in Article 2 (commencing with Section 4105)
5 of Chapter 9, except as directed by a licensed physician and surgeon, dentist,
6 podiatrist, or other authorized health care provider.

7 "...

8 "(d) Been convicted of a criminal offense involving the consumption or self-
9 administration of any of the substances described in subdivisions (a) and (b), or the
10 possession of, or falsification of a record pertaining to, the substances described in
11 subdivision (a), in which event the record of the conviction is conclusive evidence
12 thereof.

13 "..."

14 8. Section 3752 of the Code states:

15 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
16 made to a charge of any offense which substantially relates to the qualifications,
17 functions, or duties of a respiratory care practitioner is deemed to be a conviction
18 within the meaning of this article. The board shall order the license suspended or
19 revoked, or may decline to issue a license, when the time for appeal has elapsed, or
20 the judgment of conviction has been affirmed on appeal or when an order granting
21 probation is made suspending the imposition of sentence, irrespective of a subsequent
22 order under Section 1203.4 of the Penal Code allowing the person to withdraw his or
23 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
24 guilty, or dismissing the accusation, information, or indictment."

25 9. Section 492 of the Code states:

26 "Notwithstanding any other provision of law, successful completion of any
27 diversion program under the Penal Code, or successful completion of an alcohol and
28 drug problem assessment program under Article 5 (commencing with section

23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

10. California Code of Regulations, title 16, section 1399.370, states:

"For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.

"..."

COST RECOVERY

11. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law or any term and condition of board probation to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the official custodian

1 of the record or his or her designated representative shall be prima facie evidence of
2 the actual costs of the investigation and prosecution of the case."

3 12. Section 3753.7 of the Code states:

4 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
5 include attorney general or other prosecuting attorney fees, expert witness fees, and
6 other administrative, filing, and service fees."

7 13. Section 3753.1 of the Code states:

8 "(a) An administrative disciplinary decision imposing terms of probation may
9 include, among other things, a requirement that the licensee probationer pay the
10 monetary costs associated with monitoring the probation. "

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Conviction of a Crime)

13 14. Respondent is subject to disciplinary action under section 3750, as defined by
14 3750, subdivision (d), 3752, of the Code and Title 16 of the California Code of Regulations,
15 section 1399.370, subdivision (a), in that Respondent has been convicted of a crime substantially
16 related to the qualifications, functions, or duties of a respiratory care practitioner. The
17 circumstances are as follows:

18 A. On or about July 5, 2011, in the Superior Court, County of Riverside, in the
19 case of the *People of the State of California v. David Allan Wildman*, Case No. RIF1103079,
20 Respondent was convicted upon his own guilty plea, of one count of possession of
21 methamphetamine, a controlled substance, in violation of Health and Safety Code section
22 11377(a) and one count of possession of controlled substance paraphernalia in violation of Health
23 and Safety Code section 11364.

24 As a consequence of the conviction, entry of judgment was deferred and Respondent
25 was ordered to enroll in a Drug Program pursuant to Penal Code section 1000.

26 B. The circumstances of the conviction are as follows: On or about May 9, 2011,
27 a witness reported to the Riverside Police Department that he saw a Hispanic (identified as
28 Respondent) driver of a gold Cadillac smoking what the witness believed to be crack cocaine

1 from a glass pipe. The witness also reported he saw a female Hispanic in the passenger seat of the
2 car. Officers from the Riverside Police Department (Officers) located the vehicle and made
3 contact with Respondent and his companion. Respondent and his companion denied using any
4 drugs. Upon a search, the officers found a zip lock baggie containing a white crystalline
5 substance (identified as methamphetamine) in the female companion's purse. Respondent's
6 female companion stated she was holding the methamphetamine for Respondent. The officers
7 also found a clear plastic baggie containing methamphetamine in Respondent's pockets.
8 Respondent admitted to the officer that the baggies containing the methamphetamine belonged to
9 him. The officers also located a glass smoking pipe commonly used to smoke methamphetamine
10 in Respondent's car. Respondent was subsequently arrested and charged with violating Health
11 and Safety Code section 11377, subdivision (a).

12 C. On or about June 17, 2011, the District Attorney for the County of Riverside,
13 filed a felony complaint charging Respondent with one count of possession of a controlled
14 substance in violation of Health and Safety Code section 11377, subdivision (a), and one count of
15 possession of controlled substance paraphernalia in violation of Health and Safety Code section
16 11364, subdivision (a).

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Conviction of a criminal offense involving possession of controlled substances)

19 15. Respondent is further subject to disciplinary action under section 3750.5, as
20 defined by 3750.5, subdivision (d), in that he was convicted of a criminal offense of possession of
21 a controlled substance, namely, methamphetamine, as more particularly described in paragraph
22 14, above, which is incorporated by reference and realleged as if fully set forth herein.

23 **THIRD CAUSE FOR DISCIPLINE**

24 (Possession of a Controlled Substance)

25 16. Respondent is further subject to disciplinary action under section 3750.5, as
26 defined by 3750.5, subdivision (a), in that he possessed a controlled substance, namely,
27 methamphetamine, as more particularly described in paragraph 14, above, which is incorporated
28 by reference and realleged as if fully set forth herein.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Violation of Any Provision)

3 17 Respondent is further subject to disciplinary action under section 3750, as
4 defined by 3750, subdivision (g), of the Code and Title 16 of the California Code of Regulations
5 section 1399.370, subdivision (a), in that he violated a provision of the chapter, in that he was
6 convicted of a crime substantially related to the qualifications, functions, or duties of a respiratory
7 care practitioner, as more particularly described in paragraph 14 through 16, above, which are
8 incorporated herein by reference and realleged as if fully set forth herein.

9 **DISCIPLINE CONSIDERATIONS**

10 18. To determine the degree of discipline, if any, to be imposed on Respondent,
11 Complainant alleges that on or about August 31, 2006, in a prior action, the Respiratory Care
12 Board of California issued Citation Number C-06-0237 and ordered Respondent to pay the
13 administrative penalty imposed in the amount of \$250.00. The circumstances of the citation are
14 as follows:

15 A. On or about August 14, 2006, in the Superior Court, County of Riverside, in
16 the case *People of the State of California v. David Allan Wildman*, Case No. INM166436,
17 Respondent was convicted on his own guilty plea, of one count of driving with a blood alcohol
18 content greater than 0.08%, in violation of Vehicle Code section 23152, subdivision (b).

19 As a consequence of the conviction, Respondent was granted summary probation for
20 the period of three years with terms and conditions of probation.

21 B. The circumstances of the conviction are as follows: On or about March 19,
22 2006, Respondent attempted to flee a DUI CHECKPOINT after remaining in line for a period of
23 time. Upon contact, the officer smelled a strong odor of alcohol beverage emitting from
24 Respondent's breath. Respondent's eyes were red and he slurred his words. Respondent failed
25 the field sobriety tests he was given and his blood alcohol content was measured at 0.10 and 0.09.

26 C. On or about April 20, 2006, a criminal complaint was filed in Riverside County
27 Superior Court, charging Respondent with one count of violating Vehicle Code section 23152,
28

subdivision (a) [driving under the influence of alcohol] and one count of violating Vehicle Code section 23152, subdivision (b), [driving with a blood alcohol content greater than 0.08%].

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 11032, issued to David Alan Wildman, R.C.P.

2. Ordering David Alan Wildman, R.C.P., to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

3. Taking such other and further action as deemed necessary and proper.

DATED: September 20, 2011

Original signed by Liane Freels for:

STEPHANIE NUNEZ

Executive Officer

Respiratory Care Board of California

Department of Consumer Affairs

State of California

Complainant

SD2011801017

wildman acc 80542764.docx